IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2069 OF 2005

Shri.Radhakrishna Deruram Dhanjal,)
Age:53 years, Occ.Business,)
Residing at New Shantiniketan)
Society, Panchavati, Nashi-3.)..PETITIONER.

Versus

1.The Nashik Road Deolali Vypari)
Bank Ltd., Asha Nagar,)
Nashik Road, Nashik.)

2.The Chairman,)
The Nashik Road Deolali Vypari)
Bank Ltd., Asha Nagar,)
Nashik Road, Nashik.)

3.The Branch Manager,)
The Nashik Road Deolali Vypari)
Bank Ltd., Asha Nagar,)
Nashik Road, Nashik.)

4.Mr.Arjun Bhujbal,)
Recovery Officer,)
The Nashik Road Deolali Vypari)
Bank Ltd., Asha Nagar,)
Nashik Road, Nashik.)

5.State of Maharashtra,)
[At the instance of Nashik)
Road Police Station, Nashik.])..RESPONDENTS.

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Petitioner in-person present.
Mr.Mandar Goswani, Adv. for Petitioner.
Mr.Kishore Patil h/f. P.N.Joshi, Adv. for Respondent Nos.1 to 4.
Mr.A.S.Shitole, APP, for the State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

Date of reserving
the Judgment : 12th March, 2007

Date of pronouncing
the Judgment : 6th June, 2007.

ORAL ORDER :

1. Heard the petitioner -orig.complainant who is present in person, the learned Advocate for respondent Nos.1 to 4-orig.accused and the learned APP for the State.

2. The petitioner has preferred this Petition for return of property i.e. Car bearing No.MH-15R-1767.

3. Brief facts of the case are that the petitioner -orig.complainant had obtained loan of Rs.1,39,000/- from the respondent Bank for purchasing Maruti Car. The said car was hypothecated to respondent No.1. As the petitioner did not pay the loan instalments regularly, respondent bank seized the car and sold it for satisfaction of the loan amount and the sale proceeds thereof were adjusted towards the loan amount. However, the sale proceeds were not sufficient to satisfy the entire loan amount. The bank, therefore, filed suit bearing No.408 of 1999 for recovery of the remaining amount in the

Co-operative Court at Nashik. The Co-operative Court passed an Award directing the complainant and his guarantors to pay amount of Rs.45,809/- to respondent No.1-bank. The complainant has challenged the said award by filing Case No.3720 of 2003 on the ground that the accused bank had obtained award by practicing fraud upon the Court. The said case is pending before the Co-operative Court.

4. It is the case of the complainant that he has purchased another Maruti car bearing registration No.MH-15-R-1767. The said car is hypothecated to the ICICI bank for the loan of Rs.84,000/-. On 19th December, 2004 the officers of respondent No.1 bank stopped the car of the complainant in the market and forcibly took away the said car after assaulting the complainant and his family . The complainant has reported the matter to the Nashik-Road police station. As the police did not take any action against the accused, the complainant filed complaint before the JMFC, Nashik for the offences punishable under Sections 323, 354, 355, 384, 421, 556, 447, 500 and 506 read with section 34 of the IPC. In the

said matter the learned Magistrate issued directions to the police under section 156 (3) of Cr.P.C. During the course of investigation, the police seized the car from the possession of accused bank and kept it in the police station.

5. The petitioner preferred an application before the learned JMFC, Nashik for return of the car on the ground that he needs the car for his day to day work. The petitioner has contended that Maruti car is hypothecated to the ICICI Bank, hence the respondent bank has no authority to seize it. He further contended that the respondents have committed theft of the said car and kept it in godown of respondent No.1-bank.

6. In reply to the application of the petitioner-orig.complainant the bank in their reply opposed the claim of the complainant. The bank denied that they had committed theft of the vehicle. On behalf of the bank it was submitted that in Suit No.408 of 1999 filed by the bank in the Co-operative Court for recovery of the remaining amount, the Co-operative Court passed an award on 6.2.2003 against the complainant i.e.

present petitioner. Reliance was placed by the bank on the certified copy of the judgment in the Suit No.408 of 1999 which is at Exh.13. It is stated that the complainant has not preferred any appeal against the said decision dated 6.2.2003. Thereafter, on 7.3.2003 the Co-operative Court issued certificate for recovery of the amount from the petitioner and his guarantors. In view of this certificate, the recovery officer of the respondent No.1 bank has seized the vehicle of the complainant under panchnama on 19.12.2004. Even at that stage, it was stated on behalf of the bank that the bank is ready to release the vehicle if the complainant pays the decretal amount to the bank.

7. In the present case, it is seen that both the parties i.e. the complainant and the respondent Bank have claimed the custody over the said vehicle i.e. Car No.MH-15-R-1767. It is pertinent to note that the investigating officer vide his report at Exh.22 submitted that the Bank and its officials have lawfully obtained possession of the car from the complainant. The investigating officer further submitted that at

the time of obtaining the possession of the car by the accused, no offence was committed by them as alleged by the complainant.

8. On perusal of the copy of the said judgment in Suit No.408 of 1999 it is clearly seen that the Bank had filed the said suit for recovery of Rs.45,809/-, from the petitioner and his guarantors. On 6.2.2003 the Co-operative Court allowed the suit and directed the complainant and his guarantors to pay the amount of Rs.45,809/- to the respondent No.1 bank along with interest @ 14% per annum and cost of the dispute. On perusal of the copy of the Award (Exh.14), it is seen that the Co-operative Court has passed the Award in favour of respondent No.1 Bank. Perusal of copy of recovery certificate issued by the Co-operative Court dated 7.3.2003, shows that the Co-operative Court, Nashik certified that respondent No.1 bank is allowed to get Award executed through Civil Court or through Registrar as provided under Section 156 of the Co-operative Societies Act. Copy of notification dated 10.12.2004 shows that the District Deputy Registrar empowered respondent No.4 along with other officers of respondent No.1

bank to act as recovery officer of respondent No.1 bank. This notification further shows that the District Deputy Registrar has delegated powers to these persons under Section 156 (1)(b) and 156(2) of the Co-operative Societies Act. In view of Section 156(1)(b) of the Co-operative Societies Act, the Registrar or any officer subordinate to him and empowered by him may recover any amount due under a decision, award or order of the Registrar or Co-operative Court or liquidator of Co-operative Appellate Court. This section further empowers such persons to recover the amount by attachment and sale or by sale without attachment of the property of the person against whom such decree, decision, award or order has been obtained or passed. The panchnama shows that in pursuance of the powers under Section 156 of the Co-operative Societies Act, accused No.4 has seized the vehicle of the petitioner in presence of the panch witnesses. A copy of the letter dated 19.12.2004 shows that immediately after seizure of the vehicle, accused no.4 has informed the fact of seizure of vehicle to the Nashik-Road Police Station.

9. Thus, on perusal of the above record, it is clearly seen that in pursuance of the Award and certificate issued by the Co-operative Court, the recovery officer of respondent No.1 bank has seized the vehicle of the petitioner. It is seen that the recovery officer of the bank has seized the vehicle after following due procedure of law. There is therefore, no room to say that the respondents have committed theft of the vehicle.

10. On the other hand, the petitioner has submitted that he has filed application No.3720 of 2003 before the Co-operative Court praying for stay to the execution of the award passed in Suit No.408 of 1999. He has submitted that the Bank has not approached the Court with clean hands as the bank has suppressed the fact that case No.3720 of 2003 is pending before the Co-operative Court. It was further submitted that any order obtained by fraud ought to be set-aside. In support of his contention, he has placed reliance on the decision of the Supreme Court in the case of **S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. & Ors.**, reported in **AIR 1994 S.C.853**, wherein it is observed as under :-

> "It is settled proposition of law that a decree obtained by playing fraud on the Court is a nullity and non-est in the eyes of law. Such a judgment/decree by the first court or by the highest court has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."

11. As far as case No.3720 of 2003 preferred by the petitioner before the co-operative court is concerned, the Co-operative Court has not stayed the execution of the award in Suit No.408 of 1999. The Co-operative Court had only issued notice to the Bank. The petitioner has not been able to show any order in the said application whereby the Award in Suit No.408 of 1999 is set-aside or that the execution of the Award is stayed by either the Co-operative Court or any other Court of competent jurisdiction. From the record, it is clear that

the award in Suit No.408 of 1999 is still in force and thus it is binding on the petitioner. I may again state here that there is no material on record to show that the petitioner had preferred any appeal against the decision in Suit No.408 of 1999. On the other hand, as far as application No.3720 of 2003 is concerned, the order passed by the Co-operative Court in the said case shows that the Co-operative Court has disposed of the said matter and returned the plaint to the disputant i.e. the present petitioner. In this view of the matter, it cannot be said that the bank obtained the order of return of vehicle to them on account of any fraud. It is pertinent to note that as of today, the award passed by the Co-operative Court is still in force.

12. Lastly, the petitioner has submitted that the vehicle in question is hypothecated to ICICI Bank and hence the respondent bank has no authority to seize the vehicle. The petitioner relied upon the documents to show that the said vehicle is hypothecated to ICICI bank. He has submitted that in such case, the respondent bank had no authority to seize the vehicle. As far as

this aspect is concerned, it may be stated that the ICICI bank has not come forward to challenge the seizure of the car by accused bank. That bank would be at liberty to challenge the said seizure and may claim preference over sale proceeds of the said car in case it is sold by the respondent bank. That would be a dispute interse between the two banks. The petitioner cannot take benefit of hypothecation of his vehicle with ICICI bank and claim return of the said vehicle.

13. The main question here is whether the respondent bank had the right to seize the vehicle. Looking to the orders of the Co-operative Court, the award passed therein, the recovery certificate and other material it is seen that the accused bank has lawfully obtained the custody of the car. The Investigating Officer has seized the vehicle from the custody of the respondent bank by order dated 22.2.2005. The learned Magistrate after considering all the above aspects, handed over the custody of the car to the respondent Bank. The learned Sessions Judge dismissed the revision filed by the present petitioner by order dated 23.3.2005. While

dismissing the revision, the learned Sessions Judge observed that the period of custody of the property can be curtailed by giving directions to the trial Judge to dispose of the matter expeditiously, and accordingly the learned Sessions Judge directed the Magistrate to dispose of the said case i.e. R.C.C.No.334 of 2004 expeditiously. In view of the order of the learned Sessions Judge, the case should be disposed of within a short time.

14. Looking to all the above facts, the order of the learned Magistrate as well as the learned Sessions Judge is perfectly just, legal and proper. No interference is called for. Petition is rejected.

(SMT.V.K.TAHILRAMANI,J.)